



POLICE DEPARTMENT

March 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Brian Egan  
Tax Registry No. 925234  
Manhattan Gang Squad  
Disciplinary Case No. 2013-9595  
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The above-named member of the Department appeared before me on June 16, 2014 and October 30, 2014, charged with the following:

1. Said Detective Brian Egan, on or about November 22, 2011, at approximately 21:55 [sic] hours, while assigned to the Manhattan Gang Squad and on duty, in the vicinity of [REDACTED], New York County, abused his authority as a member of the New York City Police Department, in that he stopped Person A without sufficient legal authority.

P.G. 212-11 – STOP AND FRISK

2. Said Detective Brian Egan, on or about November 22, 2011, at approximately 21:55 [sic] hours, while assigned to the Manhattan Gang Squad and on duty, in the vicinity of [REDACTED], New York County, did wrongfully use force against Person A, in that he struck him without police necessity.

P.G. 203-11 – USE OF FORCE

The Civilian Complaint Review Board was represented by Remi Groner, Esq.  
Respondent was represented by Michael Lacondi, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on November 22, 2011, Respondent was assigned to the Manhattan Gang Squad and that at about 2155 hours he was on duty, dressed in plainclothes, inside [REDACTED] which is a residential apartment building within [REDACTED]

The Civilian Complaint Review Board's Case

The Civilian Complaint Review Board (CCRB) called CCRB Investigator Evelis Otero as its sole witness.

CCRB Investigator Evelis Otero

Otero conducted a recorded interview of Person A<sup>1</sup> on December 14, 2011. [CCRB Exhibit (CCRBX) 3] During this interview, Person A stated that as he approached the front door of "my building" on November 22, 2011 at about 2155 hours, he observed "police in my lobby." Person A opened the front door to the building with "my keys." As soon as he entered the lobby, Respondent told him, "Come over here." Person A complied. Respondent asked him where he was going. Person A told Respondent he was "going home." Respondent asked him if he lived in the building. Person A answered, "Yes." Then

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<sup>1</sup> The CCRB attorney offered this interview as hearsay because Person A was reluctant to testify at this trial.



Respondent asked him where he was coming from. Person A replied that he was coming from work. Person A showed Respondent both his personal ID and his work ID to prove "that I lived in the building."

Respondent told him to put his hands against the wall. Respondent patted down Person A's body and searched through his drawstring book bag. Inside the book bag, Respondent found a pocket knife. He told Person A to turn around and place his hands behind his back. Because Person A "had a whole bunch of money in" his pocket, he asked Respondent if he could call his mother to come and take the money. Respondent told him, "No." Person A was handcuffed and led out of the building. Person A yelled toward the window of his mother's apartment in an unsuccessful attempt to get his mother's attention.

Person A was placed into the rear seating area of a car. Respondent sat in the front passenger seat. Respondent turned around and asked Person A, "You wanna yell?" He then covered Person A's face by pulling down the baseball cap that Person A was wearing. While the hat was pulled down over his face, Respondent "punched" him "four times in the face." Person A had a bruise on his face, some swelling on his forehead and his vision became blurry. Person A was concerned about the blurriness because he recently had undergone laser eye surgery. Person A was first transported to a precinct and then later taken to a hospital for treatment for his injuries.

On cross-examination, Otero agreed that Person A had lied to him during the interview because the encounter between Person A and Respondent had taken place in the lobby of [REDACTED] and, contrary to what Person A had told him, Person A was not a resident of [REDACTED].

Nonetheless, Otero recommended to the CCRB Board that Person A's allegations against Respondent be substantiated because, as Otero wrote in his report, "The injury Mr. Person A sustained is consistent with what he alleged, several punches to the right eye, and is not consistent with" Respondent's "account." Otero confirmed that Respondent stated at his CCRB interview that Person A had struck his temple on the vehicle's window. Otero stated that his conclusion that Person A's allegations against Respondent should be substantiated was based upon what Person A told him during the interview, his assessment of Person A's medical records, and the injury to Person A's right orbital area that is depicted in his arrest "mug shots."

CCRB offered into evidence two "mug shots" of Person A taken at Central Booking on November 23, 2011 (CCRBX 1) and a copy of Person A's medical records from the [REDACTED] (CCRBX 2).

#### Respondent's Case

Respondent called Detectives Mark Tufano and Erin Barnes as witnesses and he testified on his own behalf.

#### Detective Mark Tufano

Tufano recalled that that on November 22, 2011, he was assigned to the Manhattan Gang Squad, that at about 2150 hours he arrested an individual for criminal trespass inside [REDACTED], and that soon thereafter Respondent arrested another individual, later determined to be Person A, at the same location. Tufano testified that residents of [REDACTED] frequently reports crimes there such as "narcotics sales,



assaults, shots fired" and "robberies." Although Tufano was focused on his own arrest, he recalled that Person A acted disorderly, spoke in raised voice, and waived his arms making it difficult for Respondent to handcuff him.

Detective Erin Barnes

Barnes recalled that on November 22, 2011, he was assigned to the Manhattan Gang Squad and that both he and Respondent were working in plain clothes assigned to an unmarked vehicle which had no partition between the front and rear seating areas. Barnes recalled that when they encountered Person A in the lobby of [REDACTED], Person A was very agitated. After Person A was arrested and removed from the building, he began yelling and screaming. He testified that after they placed Person A into the rear seating area of their vehicle, he went "berserk." Barnes was driving and while the vehicle was in motion, Person A began to curse, kick, and spit at Respondent. Respondent leaned back over Barnes into the rear seating area in order to attempt to restrain Person A. He testified that He did not see Respondent punch Person A.

On cross-examination, Barnes agreed that because he was driving, his attention was split between operating the vehicle and watching the exchange between Respondent and Person A. He repeated that from what he was able to observe by glancing at the rear view mirror and from his peripheral vision, he did not see Respondent punch Person A.

He conceded that it was possible that Respondent could have delivered a short jab punch to Person A's face without him seeing this action. He could not recall how long he and Respondent observed Person A standing in the lobby before Respondent approached him.

Respondent

Respondent testified that after he and Barnes had just finished conducting a vertical patrol, at about 2155 hours he observed Person A loitering in the lobby of [REDACTED] [REDACTED] that is a "known gang and drug location." Respondent approached him under his "common law right of inquiry" and asked him if he lived in the building or if he knew anyone who lived in the building. Person A, who appeared to be very nervous, responded that he did not reside in the building and that he was not visiting anyone in the building. Respondent asked him what he was doing there and Person A stated that he was hanging out or chilling or something to that effect. Since, based on his answers, Person A had no legal right to be present in the building, Respondent arrested Person A for criminal trespass. When Respondent tried to handcuff Person A, he made it difficult for Respondent by screaming and "flexing up." Respondent found a gravity knife and about \$1,700.00 in cash on Person A's person.

As Respondent was escorting Person A across the courtyard, Person A began screaming and cursing for his mother to come take his money. In addition, Person A was "planting his feet" and "pushing back," making it difficult for Respondent to walk him. Person A continued to be difficult and refused to enter their vehicle, an unmarked Nissan Altima. Respondent had to push Person A's head down in order to get him into the rear passenger seat. Respondent described Person A's demeanor as "hostile." When Barnes began to drive away from the location, Person A started "going crazy." Person A spit at Respondent and kicked his seat. In an attempt to prevent him from spitting again, Respondent reached from the front passenger seat into the rear passenger seating area and tried to pull Person A's



sweatshirt over his head. As Respondent did his, Person A jerked his head away sideways and his head struck the side of the car's interior. Person A then began to calm down.

During arrest processing, Respondent learned that Person A had a criminal history and was a Latin King gang member. Person A informed Respondent that his vision had become blurry and that he had recently undergone Lasik surgery so Respondent transported Person A [REDACTED]. After Person A was discharged, he was transported to Central Booking.

On cross examination, Respondent confirmed that if he observes individuals "hanging out" or loitering in non-private areas of [REDACTED], in that they do not appear to be coming or going or waiting for an elevator, he will approach them and question them. He could not recall how long he observed Person A in the lobby before he approached him and started to question him.

## FINDINGS AND ANALYSIS

### Introduction

Since Person A did not appear to testify at this trial, Respondent's attorney did not have the opportunity to cross examine him regarding the statements he made at his CCRB interview which was offered in evidence at this trial by the CCRB prosecutor as hearsay. (CCRBX 3) This is significant because Otero testified that in his opinion Person A had lied at his CCRB interview when he asserted that the lobby of [REDACTED] was "my lobby," inside "my building," and that he "lived in the building," because Otero ascertained that Person A was not actually a resident of [REDACTED].

Respondent's attorney also did not have the opportunity to cross examine Person A regarding the source of the large amount of cash that Person A had on his person. Person A told Otero that he "had a whole bunch of money in" his pocket and Respondent testified that he found about \$1,700.00 in cash on Person A's person. The question of why Person A possessed such a large amount of cash on him is relevant to his credibility.

Finally, Respondent offered unrefuted testimony that Department records showed that Person A had a criminal history and was a member of the Latin Kings gang, but since Person A did not testify at this trial Respondent's attorney was not able to question him regarding his gang affiliation or explore whether, as a result of his prior arrests, Person A was biased against police officers.

Based on the above, I find that nothing Person A alleged during his CCRB interview can be credited unless it is corroborated by independent evidence.

#### Specification No. 1

It is charged that Respondent abused his authority by stopping Person A without sufficient legal authority. Although Person A told Otero that he was not loitering in the lobby, as Respondent claims he was, since CCRB produced no witness to support Person A's hearsay claim, I cannot credit this hearsay claim.

Respondent testified that after he observed Person A loitering in the lobby of [REDACTED], he asked him if he lived in the building, if he knew anyone who lived in the building, where he was coming from and where he was going. Person A corroborated Respondent's testimony that he asked Person A these questions.



The CCRB prosecutor argued that Respondent's "questioning of Person A was without sufficient legal authority and the case law clearly tells us so." The CCRB prosecutor cited a New York Supreme Court decision<sup>2</sup> which held that where a person is merely standing in the lobby of a NYCHA building and there is no evidence of prior criminality at that location, police are not permitted to approach and question that person for the purpose of determining whether the person lives there.

However, the record here contains evidence of prior criminality at [REDACTED] [REDACTED]. Tufano corroborated Respondent's testimony that this location is known for drug sales and other criminal activity. The Appellate Division First Department has held<sup>3</sup> that a person who is standing in the vestibule of a NYCHA building that has a history of drug activity may be approached by police, questioned about residency and required to produce identification, even if that person has not engaged in conduct indicative of criminality. Thus, a person's mere presence in a NYCHA building known for drug activity is sufficient to justify an officer's inquiry into whether the person is there lawfully.

Based on the above, Respondent is found Not Guilty of Specification No. 1.

#### Specification No. 2

It is charged that Respondent wrongfully used force against Person A in that he struck him without police necessity. Person A asserted that Respondent pulled the baseball cap that Person A was wearing over his face and "punched" him "four times in the face."

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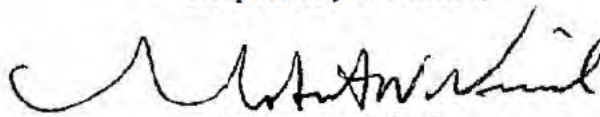
<sup>2</sup> People v. Ventura, 30 Misc3d 587, 913 NYS2d 543 (2010).

<sup>3</sup> People v. Hendricks, 43 AD3d 361, 841 NYS2d 94 (2007).

The CCRB attorney argued that the “mug shots” of Person A taken at Central Booking on November 23, 2011 (CCRBX 1) and Person A’s medical records from [REDACTED] (CCRBX 2) constitute independent evidence which sufficiently corroborate Person A’s claim that Respondent punched him four times in the face. However, the medical records from [REDACTED] describe only [REDACTED], and the “mug shots” depict only a minor injury below the corner of the right eye. Thus, neither the medical records nor the “mug shots” appear to corroborate Person A’s claim of a four punch facial beating.

Moreover, Respondent offered an alternative explanation for this minor injury which is that when he tried to pull Person A’s sweatshirt over his head to stop him from spitting, Person A jerked his head sideways causing his head to strike the rear side door. The Appellate Division First Department has held that evidence of an injury to a complainant constitutes corroboration of the complainant’s version of how this injury occurred only if the injury is inconsistent with Respondent’s plausible version of how the injury occurred.<sup>4</sup> Given the minor nature of Person A’s injury, Respondent’s version of how this injury occurred is not implausible. Based on the above, I find that the “mug shots” and medical records constitute insufficient corroboration to credit Person A’s claim that Respondent punched him four times on his face. Therefore, Respondent is found Not Guilty of Specification No. 2.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner Trials

**APPROVED**

JUN 19 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

<sup>4</sup> Vallebuona v. Kerik, 294 AD2d 44, 742 NYS2d 626, 2002 NY App Div LEXIS 5903.